

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearing No. 13,600

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Appeal of)

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INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare decreasing her ANFC benefits by removing her needs from her family's ANFC grant. The issue is whether the petitioner failed to participate in the Reach Up program within the meaning of the pertinent regulations.

FINDINGS OF FACT

The facts are not in dispute. Prior to January, 1995, the petitioner was assigned by her Reach Up case manager to participate in a community work experience program that consisted of the petitioner working in a local public library 16 hours a week. After several unexplained and unexcused absences from work the petitioner's case manager scheduled a "reconciliation meeting" with the petitioner on January 17, 1995, to discuss her compliance with the program.

At that meeting the petitioner and her case manager entered into the following "Conciliation Resolution" agreement:

[Petitioner] agrees to return to the Fletcher Free Library to continue to do community work experience 16/hrs a week. Her health has been a problem in the past. It was explained to her she needs to bring in a medical report if she is out sick for any length of time. Sanction procedures were explained.

On January 26, 1995, the case manager confirmed that the petitioner was working as agreed. On February 8, 1995, the petitioner called her case manager to say that she was sick and would be out of work for a week. There is no indication that the case manager disputed the petitioner's excuse at that time.

On March 1, 1995, the case manager called the petitioner's employer who told him that the petitioner had continued to miss time during February. The case manager contacted the petitioner and told her that he would give her another month to comply with her previous agreement. There is no indication in the

record, however, that the case manager instituted another round of conciliation anytime after January 17, 1995.

On March 20, 1995, the petitioner reported to her case manager that her husband had started working nights and was not awake during the day to provide child care. The case manager referred the petitioner to SRS for a list of day care options, and told the petitioner to get back to him if she had any problems.

On March 31, 1995, the petitioner's employer reported to the case manager that the petitioner had worked only 3 hours the entire month of March. On that date the case manager notified the petitioner's DSW case worker that the petitioner should be "sanctioned" because she "failed to cooperate with the agreed upon plan outlined in the conciliation resolution on Jan. 17, 1995". The Department then notified the petitioner that her ANFC would be reduced by removing her needs from the grant until she complies with the requirements of Reach Up.

At the fair hearing, held on May 24, 1995, the petitioner alleged that she had had domestic problems with her husband during this period and that she had not been able to find day care--although she had contacted only a few of the sources on the SRS list. She admitted that she did not contact her Reach Up case manager to inform him of her domestic and day care problems.

ORDER

The Department's decision is reversed.

REASONS

As an "unemployed parent" the petitioner is required to "cooperate with Reach Up participation requirements". W.A.M. § 2333.1(7).

The regulations regarding the Reach Up program, W.A.M. §§ 2340-2359, include the following provisions:

2349.4 De Facto Refusal

De facto refusal to participate includes, but is not limited to, an individual's failure without good cause:

. . .

-to show up for work. . .

...

When the failure to refusal is implied (de facto) by an individual's failure without good cause to fulfill one or more of the above standards, the Reach Up case manager may attempt to contact the individual and discuss the act or pattern of behavior in question. If the individual fails to cooperate or fails to meet good cause criteria, the conciliation process begins.

2350 Conciliation Process

The Reach Up program has a conciliation process to resolve disputes related to an individual's participation. This process applies to **Group 1, 2, or 3** before and after time limits. Either the participant or the Reach Up case manager initiates the conciliation process. The conciliation effort must begin as soon as possible but no later than ten calendar days following reduction of earnings or failure or refusal to accept or continue participation or employment. The conciliation period lasts for no more than 15 consecutive calendar days.

If the participant is making a good faith effort to resolve the disputes related to their participation, the case manager may extend the conciliation period an additional 15 consecutive calendar days.

The participant must be notified in writing of the reason(s) for the determination of reduction of earnings or failure or refusal to accept or continue participation or employment without good cause, a description of the conciliation process, the right to have a representative present at the conciliation conference, and the period of ineligibility that will be imposed if conciliation is unsuccessful.

The conciliation conference is a fact-finding session during which Reach Up program representatives and the participant explore ways in which the participant may satisfy Reach Up requirements. Any extenuating circumstances hindering compliance with program policies and procedures will be reviewed.

. . .

2350.1 Successful Resolution

If the participant agrees to resume participation in the activity which was the source of the determination of failure to comply without good cause, he or she will have up to five days to start participation and must participate satisfactorily for a minimum of two weeks. The participant must comply for a two-week period, or he or she will be sanctioned according to the applicable sanction. . . .

(Emphasis added.)

In this case there is no question that the petitioner failed to participate in her work experience program--but only sometime after February 15, 1995, the last date of her excused absence for illness. The above regulations are clear that the conciliation period lasts only two weeks (unless extended another two weeks, something which was not done in this case--or, even if it was, would have extended the conciliation period to February 14, 1995, at the latest).

In this case there is no allegation or indication that the petitioner failed to abide by her conciliation agreement during the first two (or four) weeks following the date she entered into it. There is also no indication that Reach Up notified the petitioner anytime after January 17, 1995, that the reconciliation process had been reinitiated--something the above regulations clearly required once the initial conciliation period had expired.

As was pointed out by the Board in Fair Hearing No. 12,720, the Department can only sanction individuals under Reach Up if the Department, itself, has followed the regulations governing the conciliation and sanction processes. As was noted in that case, the conciliation process may frustrate

Reach Up case managers by becoming a veritable "revolving door" for ANFC recipients with chronic problems with Reach Up cooperation. As was also noted, however, the overall purpose of the Reach Up program is not punitive. See W.A.M. § 2340.1. As the Board ruled in Fair Hearing No. 12,720:

In sanctioning those mandatory participants who do refuse to participate--an act that has severe consequences for that individual's entire family--the Department must comply with the strict letter of the regulations.

In this case, the Department is attempting to sanction the petitioner for program violations that occurred only after the conciliation process had expired. Under the regulations, supra, it may not do so. Therefore, the Department's decision in this matter is reversed.

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